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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GENENTECH, INC.,
 Plaintiff,
 vs.
 THE TRUSTEES OF THE UNIVERSITY OF
 PENNSYLVANIA, a Pennsylvania non-profit
 corporation,
 Defendant.

) Case No: 5:10-CV-2037-LHK (PSG)
)
) **ORDER GRANTING STIPULATION TO**
) **EXTEND DEADLINE TO COMPLY**
) **WITH PORTION OF THE**
) **COURT'S NOVEMBER 22 ORDER**
)
) **Hearing Date: TBD**
) **Time: TBD**
) **Judge: Hon. Magistrate Paul S. Grewal**
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1 WHEREAS on July 26, 2010 the defendant the Trustees of the University of Pennsylvania
2 (“the University”) served its first set of requests for production of documents (“RFPs”) on the
3 plaintiff Genentech, Inc. (“Genentech”); and

4 WHEREAS on August 25, 2010, Genentech served its responses to the University’s RFPs;
5 and

6 WHEREAS on October 4, 2010, the University filed a Motion to Compel responses to its
7 RFP Nos. 33 and 36 (Dkt. No 27) (“Motion”); and

8 WHEREAS on October 19, 2010, Genentech filed its Opposition (Dkt. No. 30) to the
9 University’s Motion and stated in footnote 4 on page 2: “The parties have never explicitly met and
10 conferred on RFP 36, the RFP that forms the basis of UPENN’s Motion on the Regulatory filings.
11 Thus, UPENN’s Motion as to RFP 36 is not yet ripe. Nevertheless, the parties have communicated
12 with respect to the BLA submissions, which are a subset of documents requested in UPENN’s RFP
13 36. Genentech understands that UPENN’s Motion is only directed to the production of the BLA
14 submissions related to Herceptin and responds on that basis.” (citations omitted).

15 WHEREAS on November 22, 2010 the Court issued an order deciding the University’s
16 Motion (“Order”) containing the following sentence:

17 In addition, to the extent there is responsive electronic data other than the BLA Submissions
18 in Defendant’s possession, custody or control that is responsive to Document Request No.
19 36, Plaintiff shall either produce the unredacted data to Defendant by November 30, 2010, or
else file a declaration by that date showing why it cannot do so and setting forth the earliest
possible date that it will be able to do so.

20 WHEREAS, Genentech has asserted that production of all regulatory materials other than
21 BLA Submissions (as that term is defined in the Court’s Order) may result in production of
22 significant irrelevant information and thereby create a burden for Genentech in production and for
23 the University in review;

24 WHEREAS, Genentech and the University are discussing whether a more limited production
25 of regulatory materials (other than the BLA Submissions) would be appropriate and believe that
26 limited additional time will facilitate those discussions;
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1 WHEREAS, if the parties are unable to reach agreement, Genentech may wish to move for
2 reconsideration and/or file objections to the Court's Order; and

3 WHEREAS, the parties agree that their discussions regarding the Order would be facilitated
4 by an extension to December 7, 2010 of the deadlines by which Genentech (a) must comply with the
5 Court's Order, solely as it relates to the above-quoted sentence, (b) file a motion for reconsideration
6 of the Court's Order; and/or (c) file objections to the Court's Order;

7 THE PARTIES THEREFORE AGREE as follows:

- 8 1. The deadline of November 30, 2010 for Genentech to comply with the following
9 sentence in the Court's November 22, 2010 Order is extended one week to December
10 7, 2010:

11 "In addition, to the extent there is responsive electronic data other than
12 the BLA Submissions in Defendant's possession, custody or control
13 that is responsive to Document Request No. 36, Plaintiff shall either
14 produce the unredacted data to Defendant by November 30, 2010, or
15 else file a declaration by that date showing why it cannot do so and
16 setting forth the earliest possible date that it will be able to do so."

- 17 2. The deadline of November 30, 2010 for Genentech to file a Motion for
18 Reconsideration of the Court's Order is extended one week to December 7, 2010.
19 3. The deadline of December 6, 2010 for Genentech to object to the Court's Order is
20 extended one day to December 7, 2010.
21 4. No other provision of the Court's November 22, 2010 Order is changed.
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1 SO STIPULATED:
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3 Respectfully submitted,

4 Dated: November 30, 2010

SIDLEY AUSTIN LLP

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6
7 By: /s/
M. PATRICIA THAYER

8 Attorneys for Plaintiff GENENTECH, INC.
9

10 Dated: November 30, 2010

IRELL & MANELLA LLP

11
12 By: /s/
13 GARY N. FRISCHLING¹

14 Attorneys for Defendants THE TRUSTEES OF
15 THE UNIVERSITY OF PENNSYLVANIA.
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27 ¹ Pursuant to General Order 45(X), the filer of this document hereby attests that concurrence in the filing of the
28 document has been obtained from Gary N. Frischling.

PURSUANT TO STIPULATION, IT IS HEREBY ORDERED that:


1. The deadline of November 30, 2010 for Genentech to comply with the following sentence in the Court's November 22, 2010 Order is extended one week to December 7, 2010:

"In addition, to the extent there is responsive electronic data other than the BLA Submissions in Defendant's possession, custody or control that is responsive to Document Request No. 36, Plaintiff shall either produce the unredacted data to Defendant by November 30, 2010, or else file a declaration by that date showing why it cannot do so and setting forth the earliest possible date that it will be able to do so."

2. The deadline of November 30, 2010 for Genentech to file a Motion for Reconsideration of the Court's Order is extended one week to December 7, 2010.
3. It is hereby recommended to Judge Koh that the deadline of December 6, 2010 for Genentech to object to the Court's Order be extended one day to December 7, 2010.
4. No other provision of the Court's November 22, 2010 Order is changed.

SO ORDERED.

Dated: *December 6, 2010*


PAUL S. GREWAL
United States Magistrate Judge